

# IN DEFENCE of FAMILY AND MARRIAGE

Marriage and family have become the target of an unprecedented attack by a number of institutions which, while lacking legal mandate, seek to undermine fundamental social and legal structures of numerous countries across the world.

Over recent years ideologues have perversely used the right call to fight violence and discrimination with a view to promote the agenda which strives to call into question the notions of family and marriage. As they claim, violence is a structural phenomenon which persists due to differences in the social roles of women and men. These differences in turn stem from the traditional family and marriage understood as a union between the man and the woman.

## Family protects against violence

The reality is very different, though, as the family gives each of its members an effective protection against violence. Strong family bonds ensure a strong shield against ailments which tend to be less frequent in the family founded on marriage than in other types of human relationships, including cohabitation. This is further corroborated by various social surveys<sup>1</sup>.

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**A bulk of social studies show that strong family bonds protect the family members against social ailments**

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1 See e.g. C.T. Kenney, S.S. McLanahan, *Why Are Cohabiting Relationships More Violent than Marriages?*, "Demography" 2006/43; G. Kline et al. *Timing Is Everything: Pre-Engagement Cohabitation and Increased Risk for Poor Marital Outcomes*, "Journal of Family Psychology", 2004/ 2; R.E. Billingham *Courtship Violence: The Patterns of Conflict Resolution Strategies Across Seven Levels of Emotional Commitment*, "Family Relations" 1987/36, pp. 283-289; J.S. Rogers, R. P. Amato, *Is Marital Quality Declining: The Evidence from Two Generations*, "Social Forces" 1997/ 3(75), pp. 1089-1100; P.R. Amato, A. Booth, *A generation at risk: Growing up in era of family upheaval*, Harvard University Press, Cambridge 1997; family, <https://www.google.pl/amp/s/www.washingtonpost.com/html/posteverything/wp/2014/06/10/the-best-way-to-end-violence-against-women-stop-taking-lovers-and-get-married/>; <https://www.heritage.org/marriage-and-family/report/marriage-still-the-safest-place-women-and-children>, <http://www.bjs.gov/content/pub/pdf/ipv9310.pdf>, [accessed on: 13.06.2018]; [https://www.mercatornet.com/family\\_edge/view/the--most-important-correlation-in-all-of](https://www.mercatornet.com/family_edge/view/the--most-important-correlation-in-all-of)

There is no doubt that the family founded on marriage between one man and one woman is the best setting to foster human development, and to protect women and children alike. Statistically speaking, children who grow up in a family where parents are not married more often become victims of domestic violence, just like women in extramarital relations are more vulnerable to intimate partner violence. According to the U.S. government special report (for the period 1993-2010) unmarried females with children are under 10 times higher risk of intimate partner violence than married women<sup>2</sup>. Other studies ordered by American government authorities yield similar conclusions<sup>3</sup>.

**Statistically speaking, children who grow up in a family where parents are not married more often become victims of domestic violence, and women in extramarital relations are more vulnerable to the intimate partner violence.**

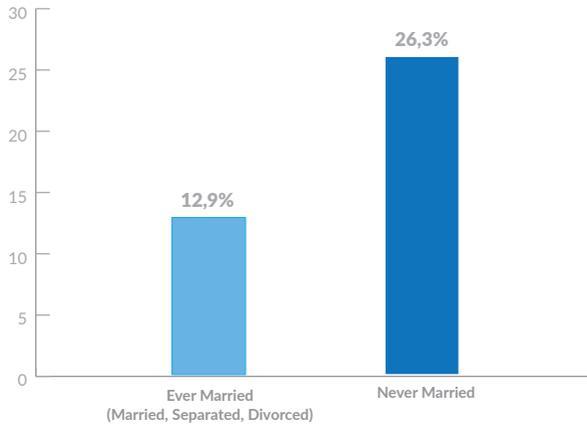
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social science/19344#sthash.aPOEKn1c.dpuf [accessed on: 13.06.2018]; <http://www.psychpage.com/family/brwaitgalligher.html> [accessed on 13.06.2018].

2 U.S. Department of Justice: S. Catalano, Intimate Partner Violence, 1993–2010, U.S. Department of Justice, 2012 (revised 2015), <http://www.bjs.gov/content/pub/pdf/ipv9310.pdf>, [accessed on 13.06.2018].

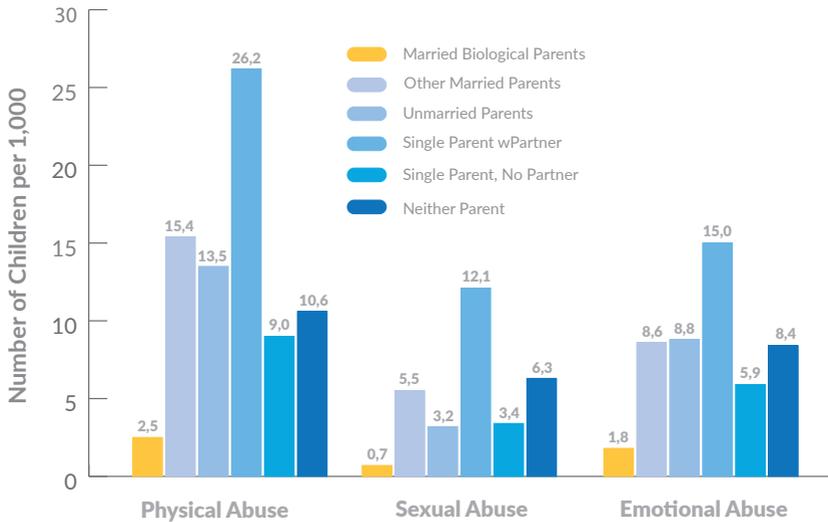
3 P. Fagan, K. Johnson, R. Rector, *Marriage Still the Safest Place for Women and Children*, available under the link: <https://www.heritage.org/marriage-and-family/report/marriage-still-the-safest-place-women-and-children>, [accessed on 13.06.2018].

### Annual Rates of Domestic Violence for Mothers with Children



Source: U.S. Department of Justice, National Crime Victimization Survey, 1992 - 2001.

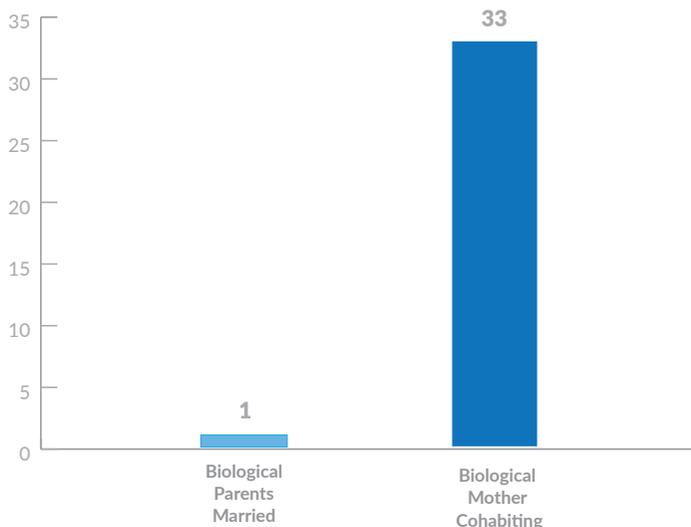
### Incidence of Endangerment Standard Abuse by Family Structure and Living Arrangement



Source: Report to Congress, Fourth National Incidence Study of Child Abuse and Neglect (NIS-4)

## In Britain, a Child Whose Biological Mother Cohabits Was 33 Times More Likely to Suffer Serious Abuse Than a Child With Married Parents

Comparative Risk Ratios for Serious Abuse, 1982-1988



Source: R. Whelan, *Broken Homes and Battered Children: a Study of Relationship between Child Abuse and Family Type*, 1994. Wielka Brytania, 1982-1988.

According to the British survey, the child living with his/her mother and her intimate partner had 33 times more chances to become the victim of domestic violence than the child who lived with married parents. In a similar vein, Polish and Hungarian studies show that strong family bonds are a major shield against violence, alcohol and drug abuse<sup>4</sup>.

<sup>4</sup> Cf. i.a. *Vademecum skutecznej profilaktyki problemów młodzieży, Przewodnik dla samorządów i praktyków oparty na wynikach badań naukowych*, eds. Szymon Grzelak, Warsaw 2015, p. 82, p. 83, p. 98; Tárkányi Ákos: *Élettársi kapcsolatban élés, intim párkapcsolat és házasság Magyarországon a 2009-es „Családi kapcsolatok” országos vizsgálat alapján*. p. 54-88; Mayer Annamária, Balásházy Imre, Czettele Győző: *A helyesnek tartott alapvető nemi viselkedéstípusok eloszlása és annak kapcsolata a vallásossággal Magyarországon 2009-ben*, p. 89-101.

Confronted with powerful international institutions, individual countries very often accept an ideological dictate, unduly imposed on them. Without a strong international coalition for the protection of marriage, family and human life, we are destined to see radical ideologies successfully advancing their cause in new countries.

European countries should start to promote positive family life patterns, unlike today, when numerous international institutions, by way of political pressure, force them into increasingly larger concessions which undermine the legal status of the family.

Therefore, we need a new international structure, able to prevent:

- further undermining of the family autonomy, including a growing tide of cases of children being removed from their parents without any justifiable grounds;
- attempts at challenging the natural importance of marriage as a union between the woman and the man, as well as the role of family, sex and parenthood;
- using public institutions, including schools, as a tool of depravity and ideological indoctrination;
- escalation of violence, including in particular domestic violence and violence detrimental of the family.

## ISTANBUL CONVENTION

The Istanbul Convention<sup>5</sup> has become one of the most important tools in the hands of ideologues aiming to undermine the role and status of the family: while pretending to be primarily aimed to fight violence, the treaty in fact includes a number of measures which result in weakening of the natural model of family and imposition of ideological premises in process of implementation of its provisions, in particular within the system of education.

So far, from 2011 the Convention was open for signatures it has been ratified by 32 states. As of July 2018, it has not been signed, among all, by **the United States of America, Canada and Japan**, and not ratified by: Armenia, Bulgaria, Czech Republic, Slovakia, Russia, Hungary, Ireland, Lithuania, Latvia, Liechtenstein, Luxembourg, Moldova, Ukraine and the United Kingdom. Currently, a number of countries, which have ratified Convention, is facing unsubstantiated pressure to implement its most controversial measures.

The Convention defines violence as a structural phenomenon which exists due to *socially constructed roles, behaviors, activities and attributes that a given society considers appropriate for women and men*. In other words, **violence is claimed be rooted in social differences stemming from differences between women and men**, which, according to its authors, should be eliminated.

**A number of obvious solutions aimed to combat violence, overwhelming majority of which have been for long implemented by European countries, are accompanied in the text of the document by the measures which impose doubtful and counter-effective ideological elements, which stay in contradiction to the constitutional values of most European countries. In particular, the Convention:**

- commits all public authorities to include a *gender perspective* in the implementation of its provisions (Article 6);
- imposes on the State the obligation *to take the necessary measures to promote*

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<sup>5</sup> Council of Europe Convention on preventing and combating violence against women and domestic violence, made in Istanbul on 11 May 2011 (Polish Journal of Laws of 2015, item 961, (CAHVIO)).

*changes in the social and cultural patterns of behavior of women and men with a view to eradicating prejudices, customs, traditions and all other practices based on stereotyped roles of women and men (Article 12);*

- *orders to include in formal curricula and at all levels of education (...) teaching materials on issues such as equality between women and men and non-stereotyped gender roles (Article 14);*
- provides a blurred and wrong definition of violence, which may lead to an unjustified interference into the family, including to children being separated from their parents without justified grounds (Article 3).

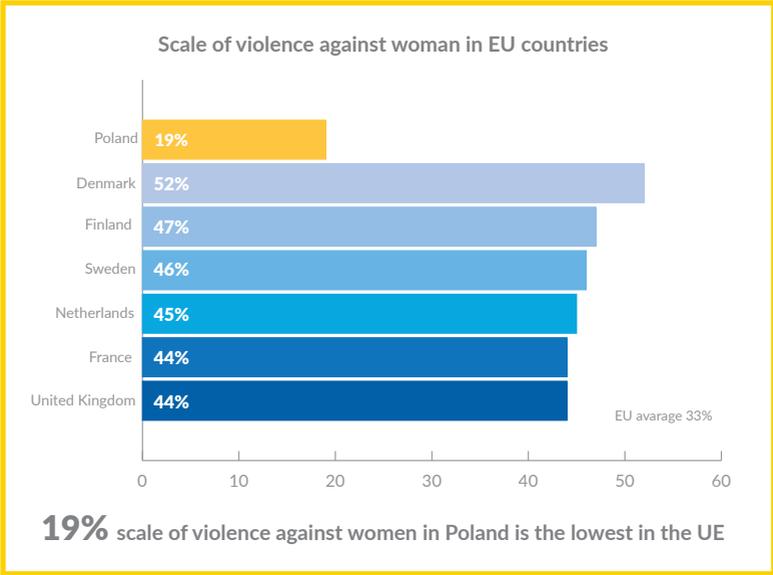
Meanwhile, in countries which, in their system of counteracting violence, have been relying for years on the ideological model set forth by Istanbul Convention, instead of decreasing abuse cases are on the rise. The EU Fundamental Rights Agency (FRA) has published the results of the EU-wide survey on violence rates against women which covered 42 thousand respondents<sup>6</sup>. Based on these findings, it has been established that in European Union Poland has the lowest percentage of women who have experienced violence (19%), with the EU average of 33%. In countries where public authorities have seen for years identified the root causes of violence in the differences in traditional sex-based roles, the percentage of women who had been victims of violence is 2.5 times higher (Denmark - 52%, Finland- 47%, Sweden - 46%, Netherlands - 45%).

A survey, conducted the same year by another international organization – the Organization for Economic Cooperation and Development<sup>7</sup> – confirms that in Poland violence against women is less widespread than in countries which for long have complied with the assumptions adopted in the Istanbul Convention. The survey, conducted with different methodology, confirmed that the prevalence of violence against women in Poland is among the lowest in Europe (13%). It was significantly lower than in Sweden (28%), in Finland (30%) and in the United Kingdom (29%).

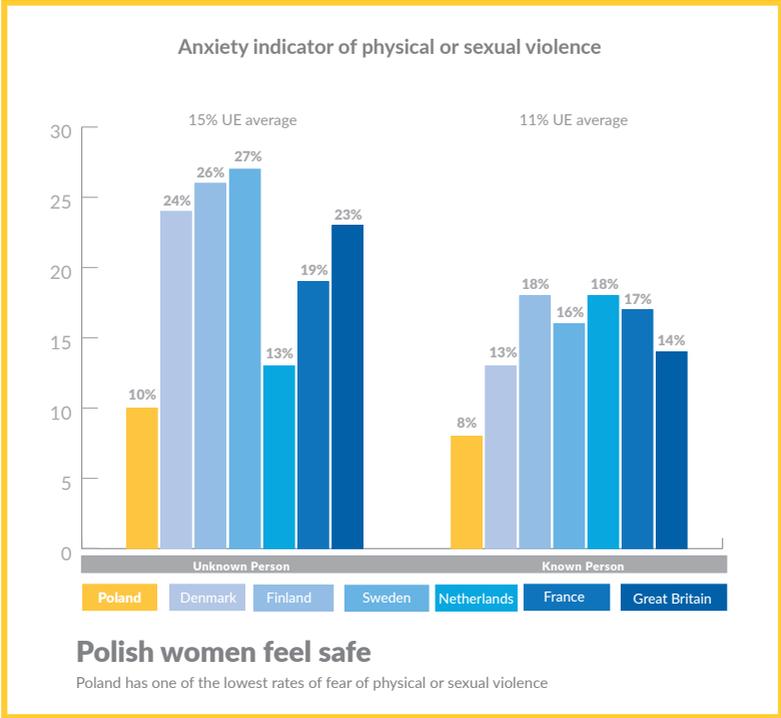
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6 European Union Agency for Fundamental Rights, "Violence against women: an EU-wide survey. Main results", Luxembourg 2014, <http://fra.europa.eu/en/publication/2014/violence-against-women-eu-wide-survey-main-results-report>, [accessed on 13.06.2018].

7 The Organisation for Economic Co-operation and Development, Violence against women (indicator). doi: 10.1787/1eb4876-en, <https://data.oecd.org/inequality/violence-against-women.htm#indicator-chart>, [accessed on 13.06.2018r.].



Source: <http://fra.europa.eu/en/publication/2014/violence-against-women-eu-wide-survey-main-results-report>



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Although the gender-based model of combatting violence is ultimately inefficient, it is being imposed on the Member States of the Council of Europe. This should be counterweighted with an effective model for fighting violence, based on the right identification of its actual determinants.

Therefore, we present the draft **Convention on the Rights of the Family (CRF)**. It is put forward as an alternative to the ideology-biased Istanbul Convention and as a voice of protest against attempts at undermining the natural notions of the family, marriage, sex and parenthood.

**The CRF aims at ensuring the genuine protection of the human being against violence and at defending the natural social order by identifying and addressing the actual root causes of violence.**

An international platform for family protection could be the only tool to effectively defend family and marriage in an international level.

The provisions of the document are inspired by the rich acquis in the field of human rights protection, including the UN Universal Declaration of Human Rights, the Convention on the Rights of the Child and the best constitutional practices of European countries. A number of provisions reaffirm previously agreed legal guarantees of family rights. It also repeats a number of tools aimed to counteract violence, which are included in the Istanbul Convention, while omitting ideologically biased solutions of this document.

# CONVENTION ON THE RIGHTS OF THE FAMILY IN A NUTSHELL

The Convention on the Rights of the Family (CRF) includes 52 Articles which set forth precise definitions of the child well-being, sex, marriage, family, violence and domestic violence.

## CHILDREN

**In order to develop its personality in a full and harmonious manner, the child should grow in a natural family setting, filled with happiness, love and understanding<sup>8</sup>.**

**The CRF ensures the protection of fundamental rights of children, and namely:**

- gives the child the full legal protection during the entire course of life (Article 5);
- provides for the safeguards of the best interest of the child in all areas of state activities regarding children (Article 23);
- ensures that the right of the child upbringing is in the first place granted to the mother and the father and to members of his/her immediate family (Article 27).

**The CRF reaffirms that family, and in particular its closest members, create together a unique community as the best setting for human development and the most effective protection against violence and other pathologies.**

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<sup>8</sup> See the Preamble to the Convention on the Rights of the Child adopted by the UN General Assembly on 20 November 1989. (Polish Journal of Laws of 1991, No. 120, item 526 as amended).

## **MARRIAGE**

**The CRF lays down the definition of marriage and provides special protection to marriage, family and parenthood with a view to strengthening the family integrity. At the same time it does not recognize legal effects of same-sex, polygamous and incestuous unions.**

- It ensures equal rights and obligations for both spouses (Article 13);
- It provides for safeguards against discrimination of large families, parents and young mothers (Article 14).

## **FAMILY AND PARENTHOOD**

**The CRF lays down the bases for social recognition and support for large families and ensures the respect of the parents' right to the upbringing of their children in line with their beliefs.** Parents hold the main responsibility for the upbringing of their children.

- It strengthens the respect of guarantees of the parental authority (Article 16);
- It ensures parents' freedom to choose schools and schooling methods for their children (Article 19);
- It recognizes parents' precedence in deciding about the upbringing their children (art. 20).

## **VIOLENCE**

**The CRF ensures the protection against domestic violence and forms of abuse which cause prejudice to family life. It presents an assessment of real root causes of violence and provides for a wide support for its victims (including legal advice and psychological counselling, financial support and housing assistance).**

The CRF proposes a number of instruments to combat violence and to help its victims (Article 35), and namely:

- promotes legal advice and psychological counselling, financial support, housing assistance, education, training and employment assistance;
- ensures access to healthcare and professional victim assistance providers;
- guarantees the sufficient number of adequate and easily available shelters with safe accommodation and active assistance for victims, especially women and their children.

- guarantees the sufficient number of adequate and easily available assistance centers for victims of rape and other forms of sexual violence, with access to medical examination and court-ordered medical tests, post-traumatic support and counselling;
- provides victims with access to legal advice and free of charge legal advice under the conditions set forth by national legislation.

**Moreover, the CRF foresees a new instrument, unknown until today, i.e.** general access to a nationwide, free information portal, available in all official languages and in all languages of national and ethnic minorities, with information resources on all forms of violence, prevention methods, rights of violence victims and violence incident reporting mechanism.

**Finally, it establishes the International Family Rights Committee tasked to monitor progress made by State Parties in complying with the standards in the field of the protection of the rights of the family.**

## **CONCLUSION**

The family is proven to be the best setting for human development and the most effective shield against violence. In the face of an unprecedented attack that the institution of family experiences today, it needs to be safeguarded, also at the international level.

**We know that we are not alone: in Europe and all over the world, a number of non-governmental organizations and governments are ready to go to great lengths to safeguard family. However, without a joint instrument in the form of an international treaty, their actions will bear little fruit.**

The family founded on marriage, and marriage **being** the union between one woman and one man are natural and unique institutions, and through the complementarity of roles of the woman and the man, joined by the marital bond, the ultimate framework is set for an integral development of the human being.

*Ordo Iuris* Institute for Legal Culture is committed to defending individuals and communities at risk of social exclusion because of their attachment to the traditional social order and the world of values which underpins such order. In particular, we strive to ensure:

- safeguards for marriage understood as a union of the woman and the man, for motherhood and parenthood and their legal identity;
- legal protection of the innocent human life at all stages of its development;
- legal protection of children against demoralization and depravity, including the parents' rights to child upbringing;